In the Supreme Court of the United States.

OCTOBER TERM, 1895.

No. [redacted] 7

DANIEL WILEY, PLAINTIFF IN ERROR,

vs.

D. L. SINKLER, T. D. LANIGAN, AND BENJAMIN ELFE.

Argument of Chas. A. Douglass for Plaintiff in Error.

The questions submitted by the Attorney General in his oral demurrer to the complaint (folios 8 and 9 of the Transcript of Record) apparently make a number of issues for the court's decision; but, when carefully examined, there are but few and but one main question to be argued and decided.

The first ground suggested in support of the oral demurrer is that the circuit court had no jurisdiction of the action.

Four reasons are assigned to support this contention:

A. Because it does not affirmatively appear upon the face of the complainant that a Federal question is involved.

B. Because it appears from the plaintiff's own statement, on the face of the complaint, that a verdict for $2,000 would be so excessive as to require the court to set it aside.

C. Because the action is not brought under the Constitution, authorizing actions against managers of elections for Members of Congress.

D. Because no action at common law can be maintained when there is a statutory action provided which abrogates the common law right.

Disposing of these several grounds in the order stated, it is submitted as to the first, that a Federal question so plainly appears upon the face of the complaint, that it would be a useless consumption of the court's time to argue it.

It appears:

A. That—

> "under the Constitution and laws of the State of South Carolina, and the Constitution and laws of the United States, the said plaintiff is and was at the time aforesaid, twenty-one (21) years of age, and is and was in every other respect, a duly qualified elector, and is and was on the said sixth day of November, 1894, entitled to vote for a member of the House of Representatives of the United States from the said State of South Carolina."

B. That—

> "the defendants were on the day and year aforesaid, the Board of Managers of the *Federal* election at the First Election Precinct in the sixth ward in the said City of Charleston, in said County and State,"—

and, it further appears from the said complaint: C. That said managers were duly appointed and qualified, and were present at the polling place on election day, and acted as the board of managers of the *Federal* election.

D. That—

> "the said plaintiff presented himself at the polling place in said election precinct, and then and there offered to vote and cast his ballot for one candidate for the office of a member of the House of Representatives of the United States for the State of South Carolina, in the 54th Congress; and the plaintiff further avers that he then and there had ready the proof of his qualifications as such *Federal Elector* as aforesaid."

E. That—

> "the said defendants unlawfully, willully and injuriously refused to permit the said plaintiff to vote at said precinct and at said Federal election."

Unless it be necessary to allege in the complaint *in haec verbis*, that a Federal question is presented, it would be difficult to conceive how one could be made to appear more perfectly than is made in the complaint here.

The second ground supporting the contention of want of jurisdiction can be as briefly disposed of. There surely is nothing upon the face of the complaint to warrant the contention that it would be the duty of the court to set aside a verdict for $2,000, in the event that such a verdict should be rendered by the jury. The sum of $2,000 might be esteemed by some as as an excessive price to pay for the tortious act of depriving on of his right of the ballot, but we know of no standard by which the trial judge could determine that fact, nor do we believe, under the decisions of this court, that the judge presiding would be warranted in applying such a standard, even if one is furnished him, for the purpose of deciding a jurisdictional question adverse to the plaintiff, especially in a case of this character. Again, the court's attention is directed to the fact that the complaint charges that the—

> "defendants unlawfully, *willfully* and injuriously refused to permit the said plaintiff to vote at said precinct and at said Federal election."

This allegation charges that the tortious act done by the defendants was done *willfully* and *wantonly*.—In such a case, it would be competent for the jury to award exemplary damages. This situation would render the task of the trial judge doubly difficult, if required to determine a jurisdictional question, by passing on the amount of damages properly recoverable, and in advance of the trial of the cause.

The third and fourth grounds given for the plea to the jurisdiction of the court, and numbered by the Attorney General in the demurrer, C and D, respectively, should properly be disposed of together.

The fact that Congress has authorized actions against managers of election for members of Congress does not take away, *in haec verbis*, the common law right to bring an action against the said managers for an alleged tortious act on their part. And it is further submitted that not only does the act of Congress, in words, not preclude the common law action, but it does not do so by necessary intendment.

But even if the statutory action is in derogation of the common law in this regard, we contend that it is not necessary in the complaint to refer to the statute in order to reap the benefits granted thereby. Whether a right to sue owes its origin to the common law or to an act of Congress in derogation of the common law, is a matter of no legal consequence so far as the allegations of the complaint are concerned. It suffices that a right of action exists.

The second general ground given in the support of the oral demurrer is that the complaint does not state facts sufficient to constitute a cause of action. In support of this contention section 2008 of the Revised Statutes of the United States is cited wherein it is provided that an action to recover a penalty may be brought against the managers of election. It is a sufficient answer to this contention to say that the fact that Congress has imposed a penalty upon the managers of election for certain derelictions on their part surely would not destroy the common law right belonging to the plaintiff, to bring a general action for damages for a wrong done him; and until it is shown that there is some foundation for this contention, further time need not be consumed in discussion.

His honor, Judge Simonton, sustaining so much of the demurrer as alleges that the complaint does not state facts sufficient to constitute a cause of action, says:

"There is in the statute law of South Carolina, of which this court is bound to take judicial cognizance, an act providing for the registration of all the voters of this State. The provisions of this act have been passed upon by the Supreme Court of South Carolina, and the constitutionality of this act has been adjudicated and established. The complaint fails to state that the plaintiff is a duly registered voter of the State of South Carolina. This is a fact—a material averment necessary to make his case."

This raises the main question for the court's consideration, and to it, we shall devote our time and attention.

If the registration law of the State of South Carolina be valid and subsisting, then the ground upon which the circuit judge sustained the demurrer is sound. For, if there is existing a valid and constitutional enactment in South Carolina, requiring all voters to be registered in accordance with the provisions of the act on that subject, as a condition precedent to the right to vote, then it is manifest that it should have been affirmatively alleged in the complaint that the plaintiff had duly complied with the law, and was therefore a duly *registered*, as well as an otherwise duly qualified elector.

If on the other hand, the act in question is invalid, unconstitutional and void, then it logically follows, that the plaintiff in error had a perfect legal right to ignore the existence of such void enactment, and to simply allege his general qualifications as an elector under the Constitution of the State and of the United States.

It becomes necessary, therefore, to inquire into the constitutional integrity of the Act of Assembly of South Carolina known as the Registration Law.

Bearing upon this issue let us put your honors in possession of the provisions of the constitution of the State of South Carolina.

Section 31—of the Declaration of Rights—which is Article 1—provides:

"All elections shall be free and open, and every inhabitant of this commonwealth possessing the qualifications provided for in this Constitution shall have equal right to elect officers and be elected to fill public offices."

Section 33, Article 1:

"Right of suffrage shall be protected by laws regulating elections and prohibiting under adequate penalties all undue influence from power, bribery, tumult or improper conduct."

Section 2 of Article 8:

"Every male citizen of the United States of the age of twenty-one years and upwards, not laboring under the disabilities named in this Constitution, without distinction of race, color or former condition, who shall be a resident of this State at the time of the adoption of this Constitution, or who shall hereafter reside in this State one year and in the county in which he offers to vote sixty days next preceding any election, shall be entitled to vote for all offices that are now or hereafter may be elected by the people, and upon all questions submitted to the electors at an election; Provided, That no person shall be allowed to vote or hold office who is now or hereafter may be disqualified therefor by the Constitution of the United States until such disqualifications shall be removed by the Congress of the United States; Provided, further, That no person, while kept in any almshouse or asylum, or of unsound mind, or confined in any public prison, shall be allowed to vote or hold public office."

Section 3 of Article 8:

"It shall be the duty of the General Assembly to provide from time to time for the registration of all electors."

Section 7, Article 8:

"Every person entitled to vote at any election shall be eligible to any office which now is, or here-

after shall be, elective by the people of the county where he shall have resided sixty days previous to such elections, except as otherwise provided in this Constitution or the Constitution of the United States."

Section 8 of Article 8:

> "General Assembly shall never pass any law that will deprive any of the citizens of this State of the right of suffrage except for treason, murder, robbery or dueling whereof the person shall have been duly tried and convicted."

Section 31 of article 1, and section 33 of article 1, and section 2 of article 7, and section 7 of article 8, and section 8 of article 8, all have reference to and *in haec verbis* define who are the qualified electors of the State.

> "*Every inhabitant* of this commonwealth possessing the *qualifications* provided for *in this* Constitution shall have equal rights to elect officers and be elected to fill public offices.
>
> "Every male citizen of the State of the age of 21 years and upwards, not laboring under the *disabilities* named in this Constitution, &c., &c., shall be entitled to vote, &c., &c.
>
> "General Assembly shall *never* pass *any* law that will deprive *any* citizen of this State of the rights of suffrage, except for treason, murder, robbery or duelling whereof the person shall have been duly tried and convicted."

Seeking, as it were, to leave no room for any doubt, it defines and redefines the qualifications of an elector; and then, even then, as if fearful some hostile mind might distort its meaning and find in a lurking place from which to make an onslaught upon its suffrage guarantees, it proceeds to enumerate what shall be the disqualifications, and declares in solemn asseveration that the "General Assembly shall never pass any law," &c., &c.

We therefore make bold to assert that the General Assembly of South Carolina has not now, nor has it ever had since the adoption of the constitution of 1868, any semblance of constitutional warrant for adding to the qualifications and disqualifications of electors, by direction or indirection.

Judge Cooley, in his great work on Constitutional Limitations, says:

> "It is a rule of construction that when the Constitution defines the circumstances under which a right may be, or a penalty imposed, the specification is an implied prohibition against legislative interference, to add to the condition or to extend the penalty to other cases."

The Supreme Court of South Carolina, construing the homestead article of its State constitution, has so clearly followed the principle as first announced by Judge Cooley, it is worthy of note here. The constitution enumerated certain articles of personalty as exempt by law to judgment debtors. The Legislature thereafter in an homestead act specified certain other articles not named in the constitution—among them bailed cotton. Upon a proper case made and carried to the Supreme Court, that tribunal held that—

> "legislature was limited to the articles enumerated in the constitution as exempt, and that a more extended enumeration was unconstitutional and void."
>
> Duncan *vs.* Barrett, 11 S. C. 333.

In the light of these very specific and emphatic provisions of the constitution in reference to the franchise, the qualifications and disqualifications therein enumerated must be read in the light of section 3, article 8, directing the General Assembly "to provide from time to time for the registration of all electors."

By the very requirements of the constitution itself, a threefold duty is imposed upon the General Assembly in reference to registration:

1. Must be such registration as will not add to the qualifications or disqualifications of electors, so clearly set forth in the fundamental law.

2. Registration "from time to time," at stated periods.

3. Registrations of all the electors of the State, defined in the constitution itself.

It will, therefore, be seen that the limitations put upon the General Assembly of South Carolina in regard to registration are peculiarly rigorous.

Registration laws are, therefore, *per se*, constitutional even where the written constitution is silent upon the subject.

When, within proper limits, the better doctrine is that they are wholesome, healthful regulation of, and protection to, the right of suffrage, but must be consistent with the right itself; must be necessary, reasonable, uniform and impartial; must be *regulation*, not *destruction*; must *facilitate* and *not impede* and *abridge* the exercise of the franchise.

Possibly the leading case on the subject in this country is Capen *vs.* Foster, reported in 12 Pick. (Mass.), at page 485. The real issue in that case was whether registration *per se* was in violation of the constitution. The particular act in question was one for the City of Boston, which provided for a full, complete list of the voters, alphabetically arranged before each election, and depriving voters not registering from voting at that election.

Chief Justice Shaw, in sustaining the constitutionality of this unobjectionable registration law, laid down the principles applicable to all. He said:

> "It is clearly within the just constitutional limits of the legislative power to adopt any reasonable and uniform regulations in regard to time and mode of exercising that right which are designed to secure and facilitate the exercise of such rights in a prompt, orderly and convenient manner. Such a construction

would afford no warrant for such an exercise of legislative power as, under the pretense and color of regulation, should subvert or injuriously restrain the right itself."

Mr. Freeman, in his very full note to a report of Capen *vs.* Foster, says:

"The construction given by Shaw, C. J., in Capen *vs.* Foster, as to laws requiring voters to be registered in order to exercise the elective franchise, is adopted in all those States where it is not forbidden by their respective constitutions."

The author of the note, after laying down the general proposition that a registration law is not *per se* unconstitutional, continues:

"While this principle is uniformly recognized, it is the *manner* in which this legislative power is exercised which gives rise to the objection that the particular enactment is unconstitutional, as impairing the right which the organic law confers; for as well established as the principle itself is its limitations, that any enactment intended to take away or unnecessarily postpone or embarrass the right of election would be set aside as unconstitutional."

Brightly, in his "Leading Cases on Elections," says:

"The power to enact registration laws, so as to insure orderly exercise of the right of suffrage within the limits prescribed in Capen *vs.* Foster, is now generally admitted; that is to say, they must be reasonable and uniform regulations, and not under the color of regulation subvert or injuriously restrain the right itself."

"The question whether a legislative provision is or is not constitutional, its validity always turns upon the question whether it is or is not a reasonable and convenient regulation of the right to vote, or is, under the pretense of regulation and abridgment, a subversion or restraint of that right.

Paine's Law of Election, 300.

Judge Cooley thus states the law at page 757 of his work on Constitutional Limitations:

> "All regulations of the elective franchise, however, must be reasonable, uniform and impartial, they must not have for their purpose, directly or indirectly to deny or abridge the constitutional right of the citizen to vote or unnecessarily to impede its exercise—if they do, they must be declared void."

Naar on Suffrage, at page 176, says:

> "The obvious conclusion is that the legislature can not add anything to the qualifications prescribed by the Constitution of the State."

In Monroe *vs.* Collins, 17 Ohio, 665, it is very properly said—

> "that the legislation should be to facilitate rather than to impede the right of suffrage. Between the legislative power and the legal elector, no matter who or what he is, the constitutional provision stands as a bulwark for the protection of his right to vote."

Accordingly, the Supreme Court of Pennsylvania, in an elaborate opinion declaring the registration law of the State void, as in contravention of the fundamental law, thus strongly state the case:

> "For an orderly exercise of the constitutional qualifications it is admitted that the legislature must prescribe necessary regulations as to the place, mode and manner and whatever else may be required to secure its full and free exercise, but this duty and right inherently imply that such regulations are to be subordinate to the enjoyment of the right, the exercise of which is to be regulated. The right must not be impaired by the regulation, it must be *regulation* purely, not destruction. If this were not an immutable principle, the elements essential to the right itself might be invaded, frittered away or entirely destroyed, under the name and pretense of regulation, and thus would be the natural order of things

subverted by making the principle subordinate to the accessory. To state it, is to prove this position."

See Page *vs.* Allen, 58 Pa. 338.

In the later case of Patterson *vs.* Barlow, reported in 60 Pa., page 75, the court held valid a special registration law for the City of Philadelphia, but did not trench upon the general principles laid down in Page *vs.* Allen. Mr. Freeman, in reporting this case in the American Decisions, says in note:

> "The elaborate disssenting opinions of Justice Thompson and Sharswood clearly enforce the rule that registration laws should not be made so vexatious or so embarrassing as to impede or to discourage the attempt to register."

In the English and American Encyclopaedia of Law, Vol. 6, at page 287, it is said:

> "No law can be passed by which the free exercise of the right of suffrage granted by the Constitution will be impaired, nor can the constitutional qualifications be abridged or other qualifications added under the pretense of regulation; nor can such conditions be required as to make it burdensome to comply with them."

In the case of Edmunds *vs.* Bamberry, 28 Iowa, 267, Chief Justice Dillon said:

> "These regulations are valid, provided they do not amount to a denial or invasion of the right conferred by the Constitution."

In the case of Monroe *vs.* Collins, 17 Ohio, 686, the Supreme Court declared the registration law of that State unconstitutional, the court saying:

> "What the legislature can not do directly, it can not do by indirection. It has no power expressly to deny or take away the right, it has none to define it away or to unreasonably abridge or impede its

enjoyment of laws professing to be remedial. The power of the Legislature in such cases is limited to laws regulating the enjoyment of the right, by facilitating its lawful exercise and by preventing its abuse."

The Constitution of North Carolina requires the General Assembly to provide for the registration of voters and that no one shall vote without registration. The Supreme Court of the State, construing that provision, says:

> "This means that the general assembly shall provide the conveniences and necessaries so that voters can register. It is to facilitate the exercise of the right of the ballot and not to defeat it. It is true that this included the power and the duty to throw around it such guards as will protect the ballot from fraud. But the act under consideration is framed upon the idea of making the ballot as difficult as possible, indeed, it makes it impracticable."
>
> Perry *vs.* Whittaker, 71 N. C. 475.

So in State *ex relatione* Wood *vs.* Baker, 38 Wis. 71, it is said:

> "Statutes can not impair the right to vote. Though they may regulate its exercise, every statute regulating it must be consistent with the constitutionally qualified voters right to suffrage when he claims his right at an election—these statutes may require proof of the right consistent with the right itself, not to abridge or impair the right, but to require reasonable proof of the right.
>
> "Any legislation by which the exercise of his right is postponed, diminishing them and must be unconstitutional, unless it can be defended on the ground that it is reasonable and necessary in order that the right of the proposed voter may be ascertained and proven."
>
> Kenner *vs.* Wells, 144 Mass. 497.

The Supreme Court of Kentucky in a carefully prepared opinion as late as November, 1890, declared the registration

law of that State void and unconstitutional. The court said:

> "It may be now regarded as settled law that in the absence of constitutional inhibition, the Legislature may pass registration laws, even of a local character, if they merely regulate in a reasonable and uniform manner, how the privilege of voting shall be exercised. It was so held in the case of Capen *vs.* Foster, and the courts in many of the States have so decided. . . . The true theory upon which these laws are based is that they must not impair or abridge the elector's privilege, but merely regulate its exercise by requiring evidence of the right. The right can not be impaired, but it may be regulated. Evidence of it may be required, consistent with the right itself."

This case is reported in 14 Southwestern Reporter (Ky.), 688.

Among the numerous other cases to the same effect are the following:

Dells *vs.* Kennedy, 40 Wis. 555.

Steanes *vs.* Connor, 22 Neb. 285.

Morris *vs.* Powell (Ind.), 29 Am. Law Register, 839, 125 Ind. 281.

White *vs.* Commissioners of Multnomah County, 13 Oregon, 317.

Daggett *vs.* Hudson, 43 Ohio, 548.

And we might go on *ad infinitum* piling up the adjudications of the courts from all over the land, until they were mountain high, and yet it would be useless consumption of the time of this court. For if there is one proposition of law in the books supported by all the adjudications, it is that a registration act, to be valid, must be a thing of *regulation* simply, and the regulation must be *necessary* and *reasonable*, that they must be to *secure* and *facilitate* the right of suffrage, and not *impair, abridge, or destroy it*, that registration must be subordinate to suffrage, and not its master and destroyer! Guided, then, by these enunciations of the law,

concurred in by all the courts of the country, let us see how stands the registration law of South Carolina. Will it bear the test laid down, and established by an unbroken current of judicial authorities? If it shall be found to "facilitate" and "secure" to the constitutionally qualified voter his right of suffrage, that it "regulates" and only "regulates" the exercise of the higher right of the ballot, that its regulations are consistent with the right itself and in harmony with the suffrage provisions of the constitution, then your honors will declare valid the law. If, however, the conclusion can not be escaped that the scheme of the act is to suppress the suffrage at every turn and point, to "abridge" and "impair its exercise," to render "burdensome" the duty of registering and the right of voting a burdensome task, this tribunal will pronounce judgment accordingly, and uphold the fundamental law of the commonwealth and nation.

For the purpose of clearness and convenience, we shall discuss the obnoxious features of the registration law as it stood at the time of the convening of the State Legislature in 1894; then we will take up the Act of December, '94, and see whether it helps, *hurts* or kills this registration scheme.

We submit, therefore:

1. That the certificate feature of the act renders the whole enactment fundamentally vicious. Registration means the entry in book or on poll lists, the names of the voters of a given election district, and this is what the Constitution obviously contemplates in section 3 of article 8.

The purpose of registration is to prevent "repeating" and the voting by parties not constitutionally qualified, or other frauds upon the franchise. The provisions of the act are not *registration simply*, and yet the chief feature of the law, if you can call one part of the scheme more remarkable than another, is that the voter is required not only to make good his right to register and must be registered, but he must have as an insignia of his rank and honor, in his pocket,

his pass, *his little pass*, without which he can not vote, although he may be a duly qualified elector under the Constitution, and his name duly entered upon the registration book.

At the polls with an election on him, without the certificate, the elector, like Sampson, shorn of his hair and robbed of his strength, lies at the mercy of his enemies—and the supporters of this iniquity should exclaim with Delilah: "The Philistines be upon thee, Sampson!"

Can this be true? Is it possible that the voter is to be robbed of his franchise, not on account of his failure to register—not by registration or the absence of registration, but by failure or inability to produce a certificate required to be held, owned and kept by the elector?

Section 142 (we quote from the Revised Statutes of '93), provides that—

> "Each elector registered (mark the word) as aforesaid, shall thereupon be furnished by the supervisor with a certificate, which shall contain a statement of his age, occupation and place of residence, as entered in said registration book, and which certificate shall be signed by the supervisor; and no person shall be allowed to vote at any other precinct for which he is registered, nor unless he produces and exhibits to the managers of election such certificate."

That this requirement adds a qualification to the right to vote not contained in the constitution, can not, for one moment, be denied, and that a certificate is not registration, is equally beyond the pale of serious controversy.

Can the reasonableness or necessity of such a provision be shown upon any sort of ground, real or imaginary? Can it be called in any sense "registration," or even part of it, to require that the voter shall have and carry with him a transcript in part of the registration books? Can it add to the registration itself that a copy of a part of it should be given out? If the registration—the original, real and only

registration, to wit, the books—are not correct, can it be possible that a copy of them will make things better? Can the copy be more correct than the original from which it is taken? But not only is not a provision (section 98) no part of registration and unnecessary and unreasonable, but it seems to have been intended to impair and abridge the suffrage and to render its enjoyment (?) a burden. To have to receive and keep and present such a certificate as the *sine qua non* to vote is burdensome, "vexatious" and "harrassing." Is there anywhere, from the Piedmont to the sea, a South Carolina voter who doesn't say amen to this?

The requirement referred to is certainly bad enough, but see how the plot thickens as the play progresses:

Section 146:

> "If the voter moves from one place to another in the same precinct he must surrender the old and get a transfer certificate."

Section 147:

> "If the voter remove from one precinct to another in the same county, must surrender the old and get transfer."

Section 148:

> "If the voter remove from one county to another, old certificate must be likewise surrendered and transfer obtained and then a new one issued."

And as if to make it the culmination of the voters' woes it is provided (section 150, Revised Statutes, 1893) that if he loses a certificate, in all its ramifications, after renewals and transfers, that he may get a renewal thereof upon furnishing proof, not that he is a qualified voter under the constitution and duly registered on the books kept for that purpose, but that his certificate (copy from the books) is really lost.

Note the provision, please:

"In case of a loss of any certificate the elector losing same shall be entitled to a renewal thereof by the supervisor, upon application and proof of such loss in the following manner, to wit: He shall at least thirty days before the next general election make application, under oath, setting forth the facts of such loss and the circumstances attending it, as near as may be, and stating that he has not sold, bartered or parted with the same for any pecuniary, valuable or other consideration, and has not wilfully destroyed the same, which application the supervisor shall examine and consider, requiring other evidence under oath if in his judgment it is necessary to a determination as to the loss thereof, &c."

The loss of bank bills or bank stock could not entail on the loser more rigorous, harsh and stringent requirements to prove the loss than is required of the elector to save his ballot from destruction, even at the very time he is being put to trouble, expense and annoyance to prove his title to citizenship he is already a duly registered as well as a duly qualified voter!

The provision contained in section 14¢, if there were no other obnoxious requirements in the act, would of itself be sufficient to successfully challenge the constitutional integrity of the entire law. To require a voter to surrender his certificate and get a new one upon every removal from one residence to another in the same precinct is monstrous, and could not possibly be intended for any other purpose than to vex and harrass the voter in his efforts to register and to vote.

A careful and painstaking examination of the various registration acts of the several States, so far as we have been able to discover, warrants the statement that the certificate feature is original and peculiar to the South Carolina Act. But if your Honors shall conclude that there is some semblance of necessity for the certificate provisions, which we have set out, fearfully burdensome and exacting as all

must admit them to be, then, even then, it is earnestly contended that the failure of the legislature to make provisions for the voter to otherwise establish his identity as the party registered, makes utterly void the act in question.

To say that a voter constitutionally qualified and legally registered, therefore entitled to vote, can not do so if he has not a certificate, and in the absence of the certificate, shutting the door in his face and denying him the right to submit other sufficient proof, is so clearly an unnecessary harshness, so palpably an abridgment of the right to vote, as to make it utterly indefensible from the standpoint of reason and of the fundamental law; so it is submitted to the court that the certificate scheme of registration is unreasonable and unnecessary, and is an abridgment of and impediment to the suffrage.

2. The time allowed for registration and for the closing of the books, the most important parts of the act, are violative of the Constitution, and void, because:

(*a*) The number of days given for registration is so short as to amount itself to an abridgment of the ballot.

When regard is had to the frets and frills surrounding registration under this act, and the red tape of the lengthy affidavits of qualifications—the furnishing other proofs if required—the paraphernalia of transfers—the infinite deal of proofs exacted in cases of loss of certificates, and the penalty imposed if certificate is not produced at the polls, one day in each month, commencing in December after one election down to July 1st preceding the next, is so grossly inadequate for real, *bona fide* registration, as to warrant the conclusion that it not only impairs, but threatens destruction of the suffrage—not only threatens, but *does, ex necessitate*, actually destroy the right of the ballot of hundreds of constitutional electors in every quarter of the State.

(*b*) The closing of the books on July the first is *fatal* to the act, as being generally "unnecessary" and "unreasonable," and as being specifically in violation of Section 2 of Article 8 of the Constitution.

To close the books on July the first, clearly unnecessary and unreasonable, so seriously impairs and abridges the franchise as in itself and of itself to make void the law. To stop all general registration full *four* months before the holding of the election, is actually without a precedent in the political history of the country, and not only without a precedent but without defense. It would take effrontery indeed to contend that there could be even an imaginary necessity to close the books one hundred and twenty days before the books are needed for the purpose of an election. As if the act went always and at all times by "contraries," the registration books are open when they should be closed, closed when they should be open, that is if the purpose of the act be to facilitate and encourage registration, and not to hinder it and render the task of compliance with the law difficult, if not impossible. We mean to say that if the voter is to be deprived of any part of the time of the year of an election in which to register, it certainly and manifestly should be the earlier months, not those immediately preceding the election. The books are open in the busy season of the year for one day in each month, months before the masses have the time or the disposition to think about the coming of an election. Then they close and are kept closed throughout the time between the sowing and the harvest, and just at a period when people have an opportunity to think of other things than the stress of private business, when political matters can be thought of and talked of, when the vigilant voter will naturally want and seek to register. Throughout that period, from July 1st to election day in November, the doors of the registration office are closed, and the sanctum of the autocratic dispenser of our suffrage can not be invaded by the eager steps of the hungry voter. The Constitution says that "all elections shall be free and open." We would have this court open wide its doors, tear down the walls of this registration house and give to the citizens of the commonwealth their free right of

suffrage, guaranteed them by the constitutions of the State and nation.

In Kinneen *vs.* Wells, 144 Mass., *supra*, the court said:

> "It is not unreasonable that registration should terminate before the election actually commences at a previous time sufficiently long to make proper preparations therefor."

The Supreme Court of Michigan, in the case of Attorney General *vs.* City of Detroit, reported in 44 N. W. Reporter, page 388, declared the act of '89 of that State void as against the provision of the Constitution. Under the act, books closed ten days before the election. The court says:

> "There is no good reason why the board of registration can not sit within the ten days before the election and thoroughly preserve to each elector his constitutional right."

How stands this provision as to the closing of the books in some of the other States? In Massachusetts the board must be in session one hour *even on the day of election.*

In Kansas, registration closes *ten days before the election,* but voters are permitted at all times during the year to register.

In Mississippi any person not on the the registration list may appear *at any time* and register.

In Kentucky registration is permitted *up to within three days* of the election.

In Wisconsin books close *ten days before* election. This is required by the constitution of the State.

In California an elector may have his name registered *at any time before* the *polls open* upon showing good reason for not registering sooner.

In New York books close *three days before the election.*

These are fair samples of the State enactments in this regard. Moreover, to close the books on July 1 is specifically violative of section 2 of article 8.

That section of the Constitution provides that one is a qualified voter when he has lived in the State one year and reside in the county which he offers to vote sixty days next preceding an election.

The registration act provides that the books shall be closed on the first day of July before each election. If that provision means anything, it is that registration must stop on that day except for parties coming of age between that day and the general election. In other words, it is required of every voter that he register four months before the election if he would cast his ballot. To require this is tantamount to requiring a residence in the county in which the voter expects to vote one hundred and twenty days before the election, while the constitution says that sixty days' residence is sufficient.

The real effect of the provision now under review is beyond the domain of debate. That no party is entitled to register between the closing of the books on July 1 to the holding of the election in November, except parties coming of age during that *interim*, is made so clear by section 97 that argument can not add to the explicit language of the legislative enactment. The section reads:

> "Any person coming of age and becoming qualified as an elector, may appear before the Supervisor of Registration on any day on which the books are opened as aforesaid, and take the oath as to his age and qualifications as hereinbefore provided, and if the Supervisor finds him qualified, he shall enter his name upon the registration book of the precinct wherein he resides—such person shall have the right of appeal as aforesaid, in case the supervisor shall not find him qualified. Provided, however, that in case a person shall not be of age to qualify him as an elector on the day of the closing of the books of registration before any general election, but shall be of such age as will qualify him as such elector before the said general election, and shall appear before the supervisor of registration and take the oath thereto

and the supervisor shall find him qualified, he shall enter his name on the registration book as aforesaid."

It must be admitted, because the conclusion cannot be escaped, that the books, on and after July 1, are closed to and against every elector, except parties reaching their majority between July 1 and the first Tuesday in November.

And from that proposition it follows, irresistibly, that all voters, except the minority class, must, *ex necessitate*, reside in the county in which they may desire to vote, one hundred and twenty days before the election!

This very fatal result is not remedied by the provisions of section 102 (we quote from the General Statutes of '82), wherein it is provided that parties removing from one county to another may get transfer certificates.

A glance at that section will suffice to convince your honors that the voter can only get such transfer, if he is already a duly registered voter, in the county from which he removes.

Let us give your honors two instances. That will settle the contention, beyond a cavil.

A and B, citizens of Georgia and of the United States, remove from Augusta, in that State, to Columbia, South Carolina, on July 5, 1893; they both live in Richland county to July 5, 1894, and thus complete the constitutional requirements of one year's residence in the State. A purchases a home in Richland and decides to make that county his place of residence. B, on July 6th, '94, removes to Fairfield to cast his lot with the good people of that county. They live in their respective counties through July, August, September, October and down to and including the 6th day of November. Under the constitution of South Carolina (Sec. 2 of Art. 8), they are qualified electors. Will anyone dare deny it?

And yet it will be interesting to go with each of them and learn of their respective experiences at the polls. A, in Richland, is refused his ballot; he can't vote because he

didn't register—he didn't register because the books were closed four days before he completed his one year's residence in the State, and yet he has lived in the State one year and "in the county in which he offers to vote (not) 60 days next preceding any election," but one hundred and twenty days. B is told that he can't vote, because he didn't register—he didn't register because he came to Fairfield on July 6th, after the books were closed, and he could not get a transfer certificate from Richland to Fairfield because under section 102 he had not previously registered in Richland. This previous Richland registration, with him, was an impossibility, because when the books closed on July 1 (the last day of grace) he had not lived out his one year's residence in the State.

Citizens of the United States—have lived continuously in the State one year, and in their respective counties twice times sixty days—and yet the legislature says, "Gentlemen, we will not let you vote."

By the Constitution the period of residence reckons from the day of election. By the registration law, from the first day of July! Has the Constitution lost its potency when it says:

> "The general assembly shall never pass any law that will deprive any of the citizens of this State of the right of suffrage, except for treason, murder, robbery, or duelling, whereof the person shall have been duly tried and convicted?"

> "The prerogative of defining the right of the suffrage is that of constitution makers and not that of the creatures of constitutions. The electors who frame constitutions and give being and power to legislatures are above the created things, and legislators can not reach above themselves to the source of their power, and the authors of their existence, for the purpose of enlarging or restricting the sovereign right of suffrage.

"If a legislature can limit, or even define, the right of suffrage, then it is greater than its constituency. The right of suffrage is a political right of the highest dignity. It is a right, as the courts declare, no department of government, nor all of them combined, can divest the citizen, otherwise than in the mode and to the extent expressly authorized by the Constitution."

Morris *vs.* Powell, (Ind.) 29 American Law Register, *supra.*

In White *vs.* Commissioners of Multnomah County, 13 Oregon 317, it is said:

"Under this act he who goes to the polls on election day possessing every constitutional qualification, may find that the legislature has stepped between him and the Constitution—he finds his vote denied because he has not done something which the legislature required him to do—he discovers that he is not a qualified elector and yet he is told that his omission to do the act which had the effect to disqualify him is not itself a disqualification. This will not square with the logic of facts. The distinction between what is substantive and what is modal is confounded. . . . If this can result, then the Constitution does not mean what it says."

How very strong and convincing is the logic and reasoning of the Oregon court, and how apt it is to the case at bar and to the act under review. A citizen is told that under the Constitution of South Carolina he is a qualified elector if he resides in the State one year, and in the county in which he expects to vote, sixty days before the election, and yet when he goes to the polls to vote, knowing that he has been in the State the year required, and in the county sixty days named in the Constitution, he is told that he ought to have been in the county on July 1 and to have then registered one hundred and twenty days before the election; that without this, his ballot must be denied. But, answers the

voter, I was not in the county on July 1, and could not register—the Constitution requires of me but a sixty days' residence; but notwithstanding this, his vote is refused and his suffrage denied.

In Massachusetts it was held that a registration law requiring that the voter must be qualified to vote thirty days before the election to register, was void. It was said:

> "It would still provide for adding another qualification to those required by the Constitution as much as the period of domicile within the town or commonwealth required by the Constitution before voting was extended to a longer period."
>
> Kinneen *vs.* Wells, 144 Mass., *supra.*

See, also, the following:

State *vs.* Wells, 5 Wis. 308.
Quin *vs.* State, 25 Ind. 485.
Kilham *vs.* Ward, 2 Mass. 236.
Bridge *vs.* Lincoln, 14 Mass. 367.

In McCaffery *vs.* Guyer, 59 Pa. Reports, 109, it was distinctly held:

> "The Legislature can not add to the constitutional qualification of electors; one who is a qualified voter under the Constitution can not be deprived of the elective franchise by a legislative enactment."

In this case plaintiff had all the constitutional qualifications of an elector; by act of the legislature it was attempted to deny the right of an elector to all who under the act of Congress had been registered as deserters from the military service of the United States, though not tried and convicted of the offence. This act the court held unconstitutional.

See, also, Green *vs.* Shundy, 39 N. Y. 418.
Brown *vs.* Grover, 6 Bush. 1.
Cooley's Constitutional Limitations, 753.
See 23 American Decisions, 632.
Monroe *vs.* Collins, 17 Ohio, 686.

The Supreme Court of North Carolina held that provisions of act amending the charter of the City of Wilmington requiring ninety days' residence in any given ward, was obnoxious to the constitution of that State; also a registration provision that required proof of above fact as condition of registration.

This is the language of the court:

> "Our Government is founded on the will of the people—their will is expressed by the ballot. The ballot embraces every citizen twenty-one years of age who has had a residence in the State twelve months and the county where he offers to vote thirty days."
>
> Peoples *vs.* Canada, 73 N. C. 198.

Mr. Naar, on Suffrage, at page 176, as quoted above, says:

> "The obvious conclusion has been that the legislature can not add anything to the qualifications prescribed by the Constitution."

3. There is nowhere in the South Carolina act any provision for registration of electors who may have been sick or absent, or for other good and sufficient reasons, did not register or could not have registered on or before July 1.

The registration act of Wisconsin, passed in 1879, required a previous registration except in the cases of one becoming qualified between the last day of registration and day of election, and any one not registered prohibited from voting at that election. The Supreme Court of that State in the leading case of Dells *vs.* Kennedy, 40 Wis. 555, declares unconstitutional said act, and says:

> "By the effect of this law the elector may, and in many cases must and will lose his vote by being utterly unable to comply with this law by reason of absence, disability, or non age, and an elector can lose his vote without his own fault or negligence, and it makes no exception in his favor and provides no method, chance, or opportunity for him to make proof of his qualification on day of election. This

law undertakes to do what it can not do, viz., to deprive a person of an absolute right without his laches, default, negligence, or consent, in order to exercise and to enjoy it, to require him to accomplish an impossibility."

And likewise the registration law of Kentucky was declared void as against the constitution of the State. We refer to the case of City of Owenboro *vs.* Nickmen et al. That law provided for registration on first Monday in July and two days succeeding, and every person declared entitled to register who could vote at the succeeding August election. The provisions of the act provide for but one registration during the year and to govern all elections during that year, and no voter shall be registered unless he personally appeared before the registration officer, and no mode is provided whereby a voter can in any way manifest his right to vote if he fail to register in July. He is deprived under the act referred to of the suffrage privilege as to all elections for a year from that time. Commenting on the provisions of this act, the court uses the following language:

"It is evident, under the provisions of the law now in question, several classes of voters, although constitutionally qualified, will be deprived of the privilege of voting for a year, and without any fault on their part, viz.: Those who have been prevented by sickness from registering in July, and those otherwise qualified but have not resided in the city 60 days before the August election; those who may remove to the city but may be qualified to vote at subsequent elections during the year, are all deprived of the right to vote at any election held in a year of the time of registration. Such a law strikes down the right itself, and is not a mere regulation of it. Containing no provisions for special registration, it, instead of facilitating and securing the privilege and guarding against fraud and corruption, not only impedes, but actually subvert and destroys the right itself, and is in direct conflict with section 7 of our bill of rights, which declares that all elections shall

be free and equal. While the legislature may enact registration laws, yet they, like all others, must conform to the constitution. It can not do indirectly what it can not do directly, and the statute as effectually deprives those we have enumerated of their constitutional privileges as if it had declared in express terms that they should not do so. . . . Such a registration law is not merely unreasonable, but it adds to the qualifications required of the voter by the constitution and abridges his right under it."

It was well said by the Supreme Court of Michigan in the late case of Attorney General *vs.* City of Detroit, *supra:*

"The law is unreasonable and void, in that it undertakes to disfranchise a large number of voters through no fault of their own, and to make unlawful distinctions between natives and foreign born. The Constitution authorizes the legislature to enact laws to preserve the purity of election and guard against the abuses of the elective franchise, but this does not authorize by direction or indirection the disfranchisement, without his own fault or negligence, of any elector under the Constitution. . . . But more unreasonable still is that this act contains no provision by which a person who is sick or absent on the days of registration can vote on election days. . . . But more unreasonable still is that this act contains no provisions by which a person who is sick or absent on the days of registration can vote on election day. . . . The man who is ill or unable to attend the meeting of the board but who is able to be out on the day of election is deprived of his ballot for no good reason. . . . Even the members of this court might be unable to register without a decided detriment to the public business and might be compelled to elect between the neglect of important official duty and the loss of suffrage."

This court declared, after investigation:

"All of the registration laws that have been upheld by the courts of other States have contained some provision by which a sick man or an absent voter

> might not be necessarily disfranchised, except in Illinois."

We can not divine why the Supreme Court of Michigan in the case from which we have just quoted, should have regarded even the State of Illinois an exception to the rule laid down. In that State a registered voter is allowed to vote on making proof of his right to vote in the manner prescribed by the registration statute of that State and without showing or making any excuse for not formerly registering. The Supreme Court upheld that statute as valid.

4. The act *perpetually* disfranchises electors failing to register for any reason during his one period of grace. This proposition brings us to the last, but by many odds the most fatal and objectionable, feature of the law.

Section 90 of the General Statutes of 1882:

> "All electors of the State shall be registered as hereinafter provided, and no person shall be allowed to vote at any election hereafter to be held unless registered as herein required."

Section 132 of the Revised Statutes of 1893 is the corresponding section to 90 of Statutes of '82. It reads:

> "All electors of the State shall be registered, and no person shall be allowed to vote at any election hereafter to be held, unless he shall have been heretofore registered in conformity with the requirement of Chapter 7 of the General Statutes of 1882 and acts amendatory thereof, or shall be registered as herein required."

Remembering that section 90 of the General Statutes of 1882 was passed before the original registration in the months of May and June, 1882, and that section 132 of the Revised Statutes of 1893 quoted, was framed after the registration of 1882, it is perfectly manifest:

(*a*) That the Legislature sought by this act to permanently disfranchise some voters.

(*b*) That the permanent disfranchisement was aimed at and intended for all parties who were qualified to vote during the months of May and June, 1882, and who did not register, and for all other voters coming of age after that time who did not register during the period after their majority and next before the general election. Can there be any doubt about this? Let us see.

Section 94 of the General Statutes of 1882 provides:

> "When the said registration (manifestly the registration provided in section 93) shall have been completed, the book shall be closed and not reopened for registration, except for the purposes as hereinafter mentioned, until after the next general election for State officers. After the said next general election, the said books shall be reopened [this language presupposed that until then they remained closed] for registration of such persons as shall thereafter become entitled to vote." ["Thereafter."] "After the said general election."

This language, in as explicit a manner as possible, excludes those then entitled to register, but who had failed to register at the registration preceding such general election. This is manifest; for, if they were then entitled to register, they could not thereafter *become* entitled to register. That these provisions, taken together, exclude persons who failed to register at the time provided for their class to register, *e. g.*, those who, being qualified electors in 1882, failed to register at the registration of that year, and were intended to do so, seems plain from section 97:

> "Any person coming of age [not already of age] and becoming qualified as an elector [in the Revision of 1893 it reads: "Any person coming of age and otherwise qualified as an elector"] may appear before the supervisor of registration on any day on which the books were opened as aforesaid."

In what way can a man already of age and otherwise qualified as an elector be brought under these words?

Now, the act declares that when the registration of 1882 has been completed the books shall be closed, and shall not be reopened except to those who shall become entitled to register. Section 94 proceeds:

> "And ever after the said books shall be opened for registration of such electors [those thereafter becoming entitled to register] on the days above mentioned until the first day of July preceding a general election, when the same shall be closed as aforesaid until the said general election shall have taken place."

How much plainer can the intent to disfranchise and the actual effect of disfranchisement be made? Indeed, the act of '94 is a legislative declaration that the construction placed upon the act is and was the legislative intent.

The phrase "For the registration of such persons as shall thereafter become entitled to register" must be construed as excluding those then entitled to register, by force of the maxim, "*expressio unius exclusio alterius*." This maxim applies wherever an act contains general provisions, and also one upon a subject which, standing alone, the general provisions would include. In such cases, the special provisions upon that particular subject indicate an intention that it is not to be deemed included in the general provisions.

Endlich on Interpretation of Statutes, 560.

So, then, the undoubted result is (if, indeed, it was not clearly intended) that if a voter duly qualified during the months of May and June, 1882, did not register, it matters not what may have been the unavoidable causes of his failure, he is, by this act, not only denied his right of baliot for the election ensuing, to wit, in November, 1882, but he is disfranchised for all subsequent elections throughout the balance of his natural life; and so on, with every other voter who, coming of age thereafter and failing for any cause to register during this one period of grace—one opportunity and one failure means perpetual disfranchisement!

We have shown that disfranchisement for one election alone can not be sustained. *A fortiori*, it can not be sustained when it seeks permanent disfranchisement.

No State in the Union has yet undertaken so stupendous and sweeping an effort at the destruction of the ballot, under the forms of law.

Now, what of the act of 1894? Will it stand the test of constitutional inquiry?

We think not, and there is reason for the faith that is in us.

1. We, therefore, submit that it is void, because it is engrafted upon the general registration law, demonstrated to be in violation of the provisions of the Constitution; and being so interwoven with the old law it, too, must fall.

Sections 4, 6, 7, and 8 of the convention act of 1894 relate to registration.

Without the general act of 1882, these sections are unintelligible—but meaningless jargon.

Section 4, undertaking to prescribe the *qualifications* of electors for the purposes of the act, has the following:

> "and duly qualified to vote under the existing laws of the State and duly registered, as now required by law, or, who having been entitled to register as a voter at the general registration of electors in this State which took place in the year of our Lord 1882, or at any time subsequent thereto, failed to register at such time as required by law, or who has become a citizen of this State, and who shall register as hereinafter provided in such cases, shall be entitled to vote for delegates to said convention."

Section 6 likewise refers to and is dependent upon the old law for sense and support. We find expressions in it like these:

> "and also on the days now fixed by law for registration . . . and any elector having been heretofore duly registered, or having since changed his

residence or having lost his certificate, shall be entitled to have same transferred or renewed, as now provided by law."

Section Seven:

"Any elector who shall have been entitled to register, at the general registration in the year of our Lord, 1882, or at any time subsequent thereto, and who failed to register, at such time, as required by law," etc., etc., "such applicant shall be allowed to register as a voter, and to have issued to him a certificate as a duly qualified elector in the manner and form now required by law, etc."

Section Eight:

"No elector shall be entitled to vote whose name is not registered as hereinbefore, or already provided by law and who does not produce his registration certificate at the polls where he offers to vote."

Expunge from this act all reference to and dependence upon the old law—make it *the* Registration enactment of the State and you have a thing partial, incomplete and without rhyme, reason or sense—and standing alone to and by itself, but the skeleton of a house, upon a bank of sand!

Even if its own provisions are constitutional and valid, while the old law is void, the anomalous situation wonld be that the electors, soon to participate in the convention election, would be part registered under the old void law and part under the new valid law.

Like the Siamese twins they are one bone, one sinew, one flesh, one blood—one can not die and the other live.

2. It contains the *vicious* provisions and features of the old law, and if in consequence of their existence in the old, we have successfully challenged *its* constitutionality, then the new act can not be upheld.

All of the certificate features of the act of 1882 are recognized, ratified, and reaffirmed in the new, and section 8, *in haec verbis*, says that—

"no elector shall be entitled to vote whose name is not registered, as hereinbefore or already provided by law, and *who does not produce his registration certificate at the polls where he offers to vote.*"

Again, the registration specially provided for by this act commences on the 4th of March and ends on the 14th of March, closing the books, so far as special registration of the special act is concerned, one hundred and fifty-nine (159) days before the convention election.

But even if the old void law is invoked to help out the situation, then the books close on July 1, fifty-one (51) days before the election is to be held.

In other words, an allowance by the two acts combined, if you count every day possible, twenty (20) days within which to register *all* classes of electors, or but fourteen (14) days for the unregistered voters out of the lapse of two hundred and thirty-two (232) days from January 1 to the third Tuesday in August.

And yet it is seriously urged upon your honors that this enactment cures the defect; that it is reasonable; that it is no restraint upon the suffrage; that it does not destroy the ballot.

Away with such sophistry! Life is too short and time too fleeting to reason with such unreason. It is but a "sounding brass and a tinkling cymbal!"

3. Like the old law, it adds to the State and county residence qualifications of the elector, in contravention of section 2, article 8, of the constitution of the State.

Under sections 4, 6 and 7 registration is confined to parties coming into the State and "who has become a citizen of this State"—speaking unquestionably either of persons as being ("has become") citizens at the time of the passage of act in December, 1894, or at the time and during the registration period therein fixed—none of the sections of this or the old act contain the expression "or who shall *hereafter*

become qualified," or "*hereafter* become a citizen," or any words equivalent thereto.

The conclusion, therefore, can not be avoided, that no one moving into the State and unqualified at and during the *time* of *registration*, can register, notwithstanding the fact that such person or persons would thereafter, and before the *election*, become qualified.

The constitution requires residence in State one (1) year and in county in which one offers to vote sixty (60) days next preceding (not registration period, but) the *election* at which he desires to vote.

4. Like the old law it makes no provision whatever after the closing of the books for registration in the *interim* between that time and the election on August 20, or for the right of voting at the election of electors, sick or absent from the State, or for other sufficient reason, did not or could not register during the period of days, in said act allowed.

5. The provisions for allowing the unregistered and heretofore disfranchised electors ten (10) or thirteen (13) days within which to register, together with the conditions and requirements thereto attached, are themselves manifestly so obnoxious to the constitution that they *kill* instead of curing the original enactment.

Not having any constitutional warrant for permanently disfranchising voters for failure during the one period of grace allowed them—and having no legal or constitutional right, even under an otherwise valid registration law, to thus punish the unregistered with perpetual disfranchisement, the legislature had, in December last, no power, nor has it now any power, to require of the unregistered, burdensome and exacting conditions not imposed by law upon those heretofore registered.

Hard as were the requirements of the old law, they pale into insignificance when compared to the exactions of the new.

What is the unregistered unfortunate now required to do? Let us see.

(1) Must make affidavit, on form prepared by Attorney-General, setting forth—

> "full name, age, occupation and residence of the applicant at the time of the said general registration, or at any time thereafter when the said applicant became entitled to register, and the *place or places of his residence since the time when he became entitled to register.*

(2) His affidavit must be "supported by the *affidavit of two respectable citizens who are each of the age of twenty-one years*" on the 30th day of June, A. D. 1882, or at the time said applicant became entitled to register.

His affidavit must contain a diary of his acts and movements for two, four, six, eight, ten, maybe twelve years—that is an unnecessary and unreasonable requirement—it is no business of the registrar or the Government he represents, to make such inquiry or to require proof.

To elicit from the applicant such facts as will or may throw light upon the question whether he is qualified or disqualified, as an elector, is, as far as a registration, *bona fide* in character, can or will go.

To move one inch beyond that boundary is to impose upon the elector restraints, discouragements and burdens calculated to subvert his right of the ballot.

But that is the smallest part of this most remarkable requirement.

To require him to thus depose is stretching the province of registration far enough, but listen—he must submit in support of his own affidavit, affidavits of two others covering the same ground as that covered by his own—the two affiants supporting his statements, must be "reputable citizens"—reputable, pray, in whose opinion? In the judgment—the partisan, capricious judgment of the registrar, if you please!

But it is answered that no affidavit of a person not "reputable" should be received. But why is so much required of an elector already qualified under the Constitution, in order to have his name simply entered on the registry list.

After all, it furnishes him even when registered no conclusive evidence of the right to vote at the election. He may be, then and there challenged, if, as a matter of fact, he is *not* a qualified elector.

Reasonable, is it? Yet so much is not considered necessary, nor, indeed, is it required at the hands of the State in a murder, arson or rape case when the issue is the life of a human being.

Again, these two reputable affiants must have been twenty-one years of age in 1882, or when applicant arrived at the age of twenty-one.

In this star chamber court room, presided over by our autocratic master of the ballot, no minors need be offered as witnesses—they are without sufficient character or sense to deliver testimony upon issues so grave.

Indeed, your honors, it is far worse than that. Not only can minors not testify, but grown men, in the maturity of their years, can not be heard as witnesses if any of the long line of facts required became known to them during their minority.

An 1882 voter, unregistered, need not apply to the supervisor for this precious certificate unless he has two men at his side, not less than thirty-four years of age.

A witness for him, the best in the land, is turned down if he be only thirty or thirty-one, or thirty-two or thirty-three years of age.

Not only is the act—its registration sections—void for reasons just assigned, but it is not uniform—it discriminates as between two classes of electors—those now registered and those allowed to register under the new act.

No such testimony was required at the hands of the elector who has heretofore registered, and if he be allowed to vote without all these affidavits, *in extenso*, about his past acts and doings, there is no shadow of constitutional justification for this discriminating penalty and burden put upon the voter now unregistered.

6. The registration sections of the act are void because their subject matter is not covered by the subject matter of the act, nor is registration properly embraced in the title of the act.

The constitution of the State provides that all acts of assembly shall relate to but one subject, which shall be expressed in its title.

The defenders of this act must choose between one of two dilemmas, viz.: (1) That registration is *not* embraced in the title of the act, or, (2) that it comes under the expression to "define and prescribe the qualifications of electors."

If the former, that part of the act, in view of the explicit language of the constitution, must be inoperative and void—if latter, then the legislature declares in the title to the act that it is its purpose in said sections to define and prescribe the *qualifications* of electors.

We have already seen this would be *ultra vires* and void.

We submit, therefore, that the registration law of the State from the act of 1882 down to and including the act of 1894, viewing it as a whole, forces the fair and candid mind, without an act of volition, to the conclusion that the intent of the act was to utterly subvert the ballot, and that it has been an effective instrument for the accomplishment of the purposes for which it was designed and framed.

With all deference to Judge Simonton, it is respectfully submitted that the Supreme Court of South Carolina has not upheld the constitutionality of the registration law.

That question was elaborately presented to that tribunal in the case of Butler *vs.* Ellerbe, reported in 44th S. C., at page 256.

The action was brought by Senator M. C. Butler *vs.* The Comptroller General of the State, and it was sought thereby to enjoin the Comptroller from issuing warrants to pay the salaries of the Supervisors of the Registration, on the ground that the act creating that office was unconstitutional and void.

The syllabus of the case is as follows:

1. *Registration Laws—State—Parties.*

An action by a taxpayer to restrain the Comptroller General from issuing his warrants, and the State Treasurer from paying such warrants, for the salaries of officers of registration and election, provided for in the general appropriation act, on the ground that the registration laws of the State are unconstitutional, null, and void, is not an action against the State, nor is the State an indispensible party thereto.

Mr. Justice Gary dissenting.

2. *Statute—Constitutionality—Decision.*

An act of the legislature will not be declared unconstitutional where there are other grounds upon which the case can be fully disposed of.

3. *Ibid—Constitution—Equity—State—Estoppel.*—Per Gray, A. J.

The State would not be permitted to deny her liability for the salaries of her registration and election officers for services rendered by her direction on the plea that the registration law was unconstitutional; and, therefore, the court of equity will not, at the instance of a citizen and tax payer of the State, enjoin the fiscal officers of the State from paying the appropriation made by the legislature for such payments.

4. *Ibid—Ibid—Ibid—Ibid.*—Per Pope, A. J.

A court of equity, in action to enjoin the payment of appropriations made by the legislature for registration and election officers, will not grant the relief demanded, nor

consider the constitutionality of the registration laws, where the petition does not show that the petitioner, or any other person entitled, has been denied his rights of registration and voting.

5. *Equity—Legal Remedies.*—Per Pope, A. J.

Equity will not grant relief where there is a plain and adequate remedy at law, and therefore the petition for injunction in this case should be refused, as there are at least two remedies at law. Mr. Chief Justice McIver dissents.

6. *Registration Laws—Constitution.*

The question of the constitutionality of the registration laws of South Carolina, raised but not considered, except by Mr. Chief Justice McIver, who expressed the opinion that they were unconstitutional, because unreasonable in their requirements, and requiring of an elector more than the Constitution prescribed."

The dissenting opinion of Chief Justice McIver strongly presents the constitutional objections to the law, and it constitutes the only deliverance on that subject by the Supreme Court of South Carolina or by any member of that court.

But it may be said, that the attack so far made is from the point of view of the constitution of South Carolina; that it in no way violates the Constitution of the United States.

Whether or not the act in question is violative of specific articles of the Federal Constitution, it is unnecessary to discuss and decide.

If it can be established that the legislation attacked is in contravention of the provisions of the State constitution, and that by reason of such void legislation, the plaintiff in error has been illegally deprived of his right to vote for a member of the House of Representatives of the United States, then the question becomes Federal in its character, and as such, cognizable in the courts of the General Government.

Wiley is a citizen, both of the United States and of the State of South Carolina—a Federal and State elector, in one person.

He derives his citizenship from, and he owes his membership in the Federal electorate to the Constitution of the United States; he derives his citizenship and his rights as a State elector from the organic law of the State, and yet by the terms and provisions of the Federal Constitution, the qualifications of the State and Federal electors must at all times and under all circumstances be the same.

Section 2 of Article 1, of the Constitution of the United States provides that—

> "the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature."

The Supreme Court of the United States, in *Ex parte* Yarborough, 110 U. S. 652, referring to qualifications fixed by the State and the Constitution of the United States on the subject, says:

> "It adopts the qualifications thus furnished as the qualifications of its own electors for Members of Congress. It is not true, therefore, that electors for Members of Congress owe their right to vote to the State law in any sense which makes the exercise of the right depend on the law of the State."

Referring to, and explaining decision and meaning of court in Miner *vs.* Happersett, 21 Wall. 162, Justic Miller, in *Ex parte* Yarborough, continues:

> "The Constitution adopts as the qualifications for voters for members of Congress that which prevails in the State where the voting is to be done; therefore, said the opinion, the right is not definitely conferred on any person or class of persons by the Constitution alone, because you have to look to the law of the State for the description of the class. But the court did not intend to say that when the

> class or the person is thus ascertained, his right to vote for a member of Congress was not fundamentally based upon the Constitution, which created the office of member of Congress, and declared it should be elective, and pointed out the means of ascertaining who should be electors."

By this provision, the Constitution of the United States adopts the State qualifications; and in effect, the qualifications of State electors for South Carolina has been inserted into the Constitution of the United States as a subdivision, so to speak, of said Section 2 of Article 1, after this manner: in the State of South Carolina, the qualifications for electors for members of Congress shall be as follows, that is to say: and then insert the qualifications of State elector existent in South Carolina *verbatim* as they are shown and set forth in the constitution of that State.

And as the qualifications of State electors are purely and exclusively constitutional—not statutory—the provisions of the South Carolina constitution would, in effect, be set out in the Federal instrument, as descriptive of the qualifications of the Federal electors for that State.

This seems to us to be a fair and accurate statement of the situation, as it is.

It would follow, therefore, that any act of assembly in violation of the provisions of the State constitution and in contravention of the constitutional rights of a State elector would, *ipso facto*, be equally void as against the Federal electorate—as in violation of the qualifications therein fixed and in effect embodied in the Constitution of the United States.

It would follow, again, that as the State makes the qualifications in the first instance and the United States Constitution simultaneously adopts them, having so contracted to do in its organic law from the foundation of the Government—that a convention of the people of the State duly called with power to abridge or enlarge the qualifications of

its own electorate has the power to change the qualifications of the Federal electorate.

And whether or not such would be the intent and purpose of a convention of the people of the State, any constitutional enactment by such convention upon the suffrage rights of the State elector, yet in the doing so the direct, proximate result, certain, sure, inevitable, is: that the Federal electorate is changed (whether abridged or enlarged) at the same moment of time, in the same manner and to the same extent as that done and affected concerning the State electorate.

Bearing in mind, therefore, that the Government of this country is dual in character (State and Federal) and in consequence, to some extent complex, the citizen has the dual character of a Federal and State elector in one and the same person—the one character he derives from one Constitution, the other from another.

In the language of the Supreme Court:

> "It is the duty of the States to elect representatives in Congress . . . the Government of the United States is no less concerned in the transaction than the State government is.
>
> "It certainly is not bound to stand by as a passive spectator when duties are violated and outrageous frauds committed. . . . Those duties are owed as well to the United States as to the State.
>
> "This necessarily follows from the mixed character of the transaction—State and National . . . the objection that the laws and regulations, the violation of which is made punishable by the act of Congress, are State laws and have not been adopted by Congress, is not sufficient answer to power of Congress to impose punishment. . . .
>
> "The State laws which Congress sees no occasion to alter, but which it allows to stand, are in effect adopted by Congress.
>
> "It simply demands their fulfillment."
>
> Ex parte Siebold, 100 U. S. 388.

There can be no stronger statement here than in the concluding words of Justice Miller in *Ex parte* Yarborough. He said:

> "If the Government of the United States has within its Constitutional domain no authority to provide against these evils, if the very sources of power may be poisoned by corruption or controlled by violence and outrage, without legal restraint, then, indeed, is the country in danger, and its best powers, its highest purposes, the hopes which it inspires, and the love which enshrines it, are at the mercy of the combinations of those who respect no right but brute force, on the one hand, and unprincipled corruptionists on the other."

But it may be said that the registration enactments herein attacked have been so materially altered by the State constitution of 1895 and the act of Assembly approved March 5, 1896, that the questions raised as to the constitutional integrity of the acts of '82 and '94 are no longer living issues.

We answer that the tortious act complained of by the plaintiff in error was committed while the acts of '82 and '94 were upon the statute books, and consequently before the ratification of the new constitution of 1895 and the later enactment of March 5, 1896.

It follows, therefore, that the issues in this cause must be determined by the law *then* in force.

Again, it may be suggested, in conclusion, that the provisions of the new constitution and of the new registration law will be found, upon close scrutiny, to contain many of the objectionable features pointed out in the old law, but the issues as to the new law that may arise, upon a proper case made, are not for us to suggest or argue, nor for this court, in this cause, to consider and adjudicate.

CHAS. A. DOUGLASS,
Attorney for Plaintiff in Error.